

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555 (JMP) and 08-01420 (JMP) (SIPA)

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Debtors.

In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

U.S. Bankruptcy Court
One Bowling Green
New York, New York

August 5, 2009

10:01 a.m.

B E F O R E :

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

OMNIBUS HEARING

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 I. UNCONTESTED MATTERS:

2 HEARING re Motion of Wells Fargo Bank, National Association to
3 Compel Lehman Brothers Special Financing Inc. to Assume or
4 Reject an Executor Contract

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6 II. CONTESTED MATTERS:

7 HEARING re Debtors' Motion to Assume the Open Trade
8 Confirmations with Three Basso Funds

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10 HEARING re Motion of the Debtors for Establishment of
11 Procedures for the Debtors to Compromise and Settle Claims in
12 Respect of the Origination or Purchase of Residential Mortgage
13 Loans

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15 HEARING re Debtors' Motion for Entry of an Order Pursuant to
16 Bankruptcy Rule 2004 Compelling Discovery against Consolidated
17 Container Company LLC

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1 HEARING re Interim Applications for Allowance of Compensation
2 for Professional Services Rendered and for Reimbursement of
3 Actual and Necessary Expenses:

4 **A. Bortstein Legal LLC**

5 **B. Bracewell & Giuliani LLP**

6 **C. Jones Day**

7 **D. McKee Nelson LLP**

8 **E. Jenner & Block LLP**

9 **F. Ernst & Young LLP**

10 **G. McKenna Long & Aldridge LLP**

11 **H. Lazard Freres & Co. LLC**

12 **I. Curtis, Mallet-Prevost, Colt & Mosle LLP**

13 **J. Reilly Pozner LLP**

14 **K. Milbank, Tweed, Hadley & McCloy LLP**

15 **L. FTI Consulting, Inc.**

16 **M. Houlihan Lokey Howard & Zukin Capital, Inc.**

17 **N. Quinn Emanuel Urquhart Oliver & Hedges, LLP**

18 **O. Simpson Thacher & Bartlett LLP**

19 **P. Weil, Gotshal & Manges LLP**

20 **Q. Windels Marx Lane & Mittendorf, LLP**

21

22 HEARING re LBHI's Motion for Authorization to Enter into (i) an
23 Amended Repurchase Agreement with Aurora Bank FSB and (ii) a
24 Financing Facility with Aurora Loan Services, LLC

25

1 SECURITIES INVESTOR PROTECTION CORPORATION PROCEEDINGS:

2 III. UNCONTESTED MATTERS

3 HEARING re Trustee's Motion for Entry of Order Pursuant to
4 Section 365 of the Bankruptcy Code and Federal Rules of
5 Bankruptcy Procedure 6006 and 9014 Authorizing the
6 Trustee to Assume and Assign an Executory Contract to Lehman
7 Brothers Holdings Inc. and Related Relief

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25 Transcribed by: Sharona Shapiro

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22 BY: HOWARD L. SIMON, ESQ.

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1 THE COURT: Good morning and be seated, please.

2 Mr. Miller, how are you?

3 MR. MILLER: Good morning, Your Honor. This is an
4 omnibus hearing in the Lehman cases. I'm sort of overwhelmed,
5 Your Honor, by all the electrical equipment. I'm afraid
6 it's --

7 THE COURT: Believe me, I'm overwhelmed by it too. I've
8 been dealing with it since July 20th and I'll be dealing with
9 it through the end of the month and into September on another
10 case, so don't be intimidated by it but also don't touch it.

11 MR. MILLER: Your Honor, I think we have a rather
12 short agenda for this morning. There's one uncontested matter.
13 There were originally five contested matters, Your Honor.
14 Essentially they're all consensually resolved.

15 THE COURT: Good.

16 MR. MILLER: And you have two pretrial conferences in
17 adversary proceedings at 2 o'clock this afternoon --

18 THE COURT: Good.

19 MR. MILLER: -- and a number of adjourned matters.
20 With Your Honor's permission, I would like to go to number 5,
21 the fee applications, because I think most of the people here
22 are probably involved in that. And we can resolve it.

23 THE COURT: That's fine.

24 MR. MILLER: As Your Honor may recall, the
25 consideration -- the hearing on the applications for allowances

1 of compensation was originally scheduled to be heard on May 13,
2 2009. In the period between the time of the filing of the
3 applications and that hearing date, at Your Honor's suggestion
4 there was an agreement reached as to the appointment of a fee
5 committee.

6 And on May 13, Your Honor approved the appointment of
7 the fee committee which consists of four members. The
8 committee is chaired by Mr. Kenneth Feinberg who is the
9 disinterested independent chairperson of the committee. And
10 there are representatives on the committee of the U.S.
11 Trustee's Office, the Lehman estates, and the official
12 creditors' committee. And since the organization of the
13 committee it has worked, I believe, Your Honor, assiduously to
14 deal with the fifteen applications that are pending before the
15 Court.

16 And on Monday, August 3, Your Honor, the fee
17 committee filed its report. There are fifteen applications,
18 Your Honor, in round figures, applying for a total of 96
19 million dollars plus a reimbursement of expenses totaling
20 approximately 2.7 million dollars. The fee committee report,
21 Your Honor, which consists of six pages, is just a surface of
22 the committee's work.

23 As to each fee applicant, the fee committee has
24 directed a schedule of items which it has either comments or
25 questions or suggestions as to each fee application, and those

1 are quite extensive, Your Honor. I know from reviewing the one
2 that was submitted in connection with my firm, there are like
3 486 items that have to be resolved on that schedule. And I
4 haven't seen the others, Your Honor, but I assume they are just
5 about as voluminous.

6 As I read the fee committee report, Your Honor,
7 basically what the fee committee is suggesting, Your Honor may
8 recall, is a twenty percent holdback in respect of all of the
9 fees which have been asked for. In the fee committee report it
10 recommends that the twenty percent holdback be reduced to ten
11 percent for the first interim fee applications pending the
12 resolution of the outstanding issues note by the fee committee
13 and the individual summary sheets that have been sent to each
14 of the retained professionals.

15 In addition, the fee committee emphasizes that its
16 recommendation regarding the remaining ten percent is due to
17 the early stage of these proceedings and is designed to protect
18 against unanticipated future events. Over the next 120 days
19 there will be, I take it, Your Honor, discussions with the fee
20 committee as to each of the items which has been highlighted by
21 the fee committee for either comment or resolution.

22 I would note, Your Honor, that in the fee committee
23 report, as to the total amount of disbursements which have been
24 requested, which is \$2,766,000 in round figures, the
25 inappropriate expenses which the committee suggests will be

1 disallowed, total \$75,114.17, or an amount that is less than
2 .01 percent. So I think that's a fairly good record, Your
3 Honor. As to the fee applications themselves, of the
4 \$96,181,531 of requests for compensation, the fee committee
5 recommends that there are inappropriate fees that should be
6 disallowed totaling \$223,262.01. That Your Honor, is less
7 than .002 percent.

8 So on the overall basis, Your Honor, I think the fee
9 applications were pretty complete. And over the next 120 days
10 the balance of those comments will be resolved. So the
11 recommendation is -- and the debtors, Your Honor, join the
12 recommendation -- that the holdback be reduced at this time so
13 that the holdback is equal to ten percent and that that will be
14 dealt with over the next 120 days, and that Your Honor would
15 enter an order approving the fee applications and releasing the
16 holdback to the extent of fifty percent of the original twenty
17 percent.

18 THE COURT: Thank you, Mr. Miller. I'd like to ask
19 the representative for the U.S. Trustee, Mr. Andrew Velez-
20 Rivera, who if I recall correctly, is a member of the
21 committee, if he has any comments. I read the report and I was
22 impressed with its thoroughness and the approach that's
23 reflected here which appears to be cooperative and
24 constructive. But I'd be interested in hearing, if you're
25 prepared to comment, as to any aspect of the report or any

1 aspect of the fee approval process.

2 MR. VELEZ-RIVERA: I'd be glad to, Your Honor.

3 Andrew Velez-Rivera for the United States Trustee. I'll let
4 the report speak for itself because the fee committee itself
5 hasn't deputized me to speak on its behalf. But I will tell
6 the Court, and I feel free to do so, that the fee committee
7 functions very well. There are different points of view held
8 by each of the individual members on the committee. It
9 functions as a committee should. There is an emphasis on the
10 committee for achieving, if not unanimity, certainly a friendly
11 and amiable consensus. And as a modus operandi, that seems to
12 be working for us very well. It's been a lot of work. Mr.
13 Miller referenced the paper that was sent over to Weil,
14 Gotshal. He can rest assured that he can multiply that by
15 about three.

16 And that is the sum and substance of the work of the
17 fee committee. We will be working with the professionals
18 hopefully sooner than the next 120 days so that at least all of
19 the outstanding comments will be resolved by the next round of
20 fee applications which I think should be in the early fall. We
21 do expect most of the comments that are outstanding at this
22 point to be resolved, or at least resolved to nobody's
23 satisfaction, so that the fees may be allowed, disallowed,
24 allowed to a lower extent, and we'll march forward.

25 I think the fee committee knows it has a lot of work

1 before it from now until confirmation, but everybody seems to
2 be prepared for the exercise.

3 THE COURT: Good. I appreciate that. And please
4 pass along to your other committee members my views that the
5 report was extremely helpful and gives me confidence that
6 appointing the committee was the right decision in a case of
7 this sort. And I found it to be comforting that, as Mr. Miller
8 pointed out, although I did not do the math, the areas of
9 dispute seem to be relatively limited in terms of the
10 percentage that's being sought, which suggests that the fee
11 application process is working.

12 MR. VELEZ-RIVERA: I think it is. I think it is.
13 Thanks, Judge.

14 THE COURT: Thank you.

15 MR. MILLER: Your Honor, I should have added that the
16 fee committee has -- perhaps the right word is directed
17 henceforth all of the professionals, the retained professionals
18 other than the OCP, ordinary course professionals, will be
19 required to submit budgets on a monthly basis --

20 THE COURT: I noticed that.

21 MR. MILLER: -- by the fifteenth day of the prior
22 month for the following month. And all the retained
23 professionals will be following that schedule.

24 THE COURT: I think that's a very good discipline. I
25 recognize that the fees in this case are, in relative terms,

1 extraordinary, perhaps the most significant accumulated fees
2 for retained professionals in any bankruptcy case that I'm
3 aware of. 96,181,000 dollars and change is a significant
4 amount of money and, candidly, would be significant if it were
5 the total amount involved in a Chapter 11 case. It reflects
6 the extraordinary effort of the retained professionals in this
7 case to date.

8 And the fact that the fee committee has recommended
9 that the fees be approved, subject to a ten percent holdback,
10 which itself can be reduced after further compliance with the
11 committee's requests, demonstrates that not only have the
12 professionals done what the Court views to be an outstanding
13 job to date. But they've also done an outstanding job in
14 reporting their performance in accordance with the requirements
15 of the Bankruptcy Code.

16 I'm pleased to approve the interim fees, and will
17 look forward --

18 MS. KURTZ: Your Honor?

19 THE COURT: Yes?

20 MS. KURTZ: This is Marcy Kurtz from Bracewell &
21 Giuliani. Before you have passed from this matter to the next
22 one, I wondered if I might make a brief comment about
23 Bracewell & Giuliani's fee application. I'm embarrassed to
24 have to do this with all these lawyers on the phone because I
25 need to point out to the Court that we have made a mistake in

1 our application and filed an amendment to correct that late on
2 Monday when we realized over the weekend, getting ready for the
3 hearing, that there had been a mistake.

4 THE COURT: Was the mistake --

5 MS. KURTZ: Would now be a good time to address that?

6 THE COURT: Why don't you make the embarrassing
7 revelation now?

8 MS. KURTZ: Okay. Well, we --

9 THE COURT: What's the mistake?

10 MS. KURTZ: Bracewell & Giuliani was retained by the
11 debtor as an ordinary course professional which, the Court may
12 remember, allowed those firms to bill in the ordinary course up
13 to 150,000 dollars a month for a total cap of a million
14 dollars.

15 In the first month that the firm was retained, the
16 bill exceeded that cap by approximately 5,000 dollars, so we
17 followed the instruction and filed a fee application to cover
18 the entire amount because we had exceeded the cap. And instead
19 of asking for payment of the full one hundred percent of the
20 fees, we only asked for the Court to authorize eighty percent,
21 and I don't think that that is governing guideline for the
22 ordinary course professionals, which Bracewell is.

23 So on Monday we asked if the Court might consider
24 allowing the full amount instead of just the eighty percent.
25 And so the eighty percent, as we note, would have been 155,496,

1 which is what we asked for. On Monday we asked the Court to
2 please consider allowing the debtor to pay the full one hundred
3 percent which is 194,370 dollars. And while we are also not
4 supposed to be, I don't believe, subject to the fee committee's
5 review, they did in fact review our fee application and, to my
6 knowledge, did not have any comments.

7 So I'd ask the Court, if you could, in approving
8 Bracewell & Giuliani's fee, that you approve the amended
9 application for payment of a hundred percent rather than the
10 original application for simply payment of eighty percent.

11 THE COURT: Well, I heard everything you said, but
12 I'm a little bit confused. Are you, at this point, a retained
13 professional that should be governed by the procedures
14 applicable to all retained professionals, or are you an
15 ordinary-course professional that simply tripped up on a cap
16 and as a result had to file an application? So what are you
17 doing now? Are you proceeding as a retained --

18 MS. KURTZ: The latter, Your Honor.

19 THE COURT: Excuse me?

20 MS. KURTZ: We're the latter -- not the former, we're
21 the latter. We are an ordinary-course professional that
22 tripped up on the cap and filed an application.

23 THE COURT: Well, I think on the basis of the
24 representations that you've made that you should be treated as
25 an ordinary-course professional that also went through the

1 drill of having a fee application process that others didn't
2 have to go through. And maybe next time you'll do less work so
3 you don't trip up on that cap.

4 MS. KURTZ: We've been doing less work.

5 THE COURT: Excuse me?

6 MS. KURTZ: That's it, we've been doing less work.
7 They've all fallen under the cap except this one.

8 THE COURT: Okay. I don't have a problem with a
9 hundred percent payment of the amount which is the subject of
10 your fee application with the understanding that you fall
11 within the basket of ordinary-course professionals and will
12 always fall in that basket except by chance that you should
13 exceed the cap another time.

14 MS. KURTZ: That's correct, Your Honor. Thank you.

15 THE COURT: Okay.

16 MR. MILLER: There is one other ordinary-course
17 professional, Your Honor, who exceeded the cap, Windels Marx
18 Lane & Mittendorf. And that application is also noticed for
19 today, Your Honor. And I don't know whether the fee committee
20 looked at that at all.

21 MR. SIMON: Your Honor, Howard Simon for Windels.
22 That is correct. Windels has submitted five traditional fee
23 applications under Section 330 because we slightly tipped over
24 the 150,000 dollar monthly amount in each of the five months.

25 THE COURT: Well, I don't see any reason why your

1 firm should be in a different position from Bracewell &
2 Giuliani. The same rule should apply. Are you making the
3 request? If you don't make the request I won't grant you the
4 relief.

5 MR. SIMON: I am certainly making that request, Your
6 Honor.

7 THE COURT: All right, then the relief you request is
8 granted and you get a hundred percent.

9 MR. SIMON: Thank you.

10 MR. MILLER: Your Honor, we will submit an
11 appropriate order.

12 THE COURT: Fine. Thank you.

13 MR. MILLER: If Your Honor please, could we please
14 now -- it's going slightly out of order, going to number 6 on
15 the agenda, Your Honor, which is the debtors' motion for
16 authority to enter into an amended repurchase agreement with
17 the Aurora Bank FSB and provide a financing facility with
18 Aurora Loan Services, LLC.

19 This matter, Your Honor, was originally on the
20 calendar as a contested matter. A limited objection was filed,
21 I believe on behalf of Elliot Management, although there's some
22 confusion in the papers. It says an objection of Elliot
23 Management, but the attorney's represent a different Elliot in
24 this. But I take it it's all one objection. There was a reply
25 filed to that limited objection, and last night we received a

1 notice of withdrawal of the limited objection from the Dewey &
2 LeBoeuf firm. So there is no objection to that.

3 This is a similar motion to motions which Your Honor
4 has already in connection with the protection of the equity
5 interest in the Aurora Bank, the Federal Savings Bank, as well
6 as in the Woodlands Bank, which is the other bank in which we
7 have an equity interest.

8 There are no objections. Your Honor has gone through
9 this, I think, now six times as we have continued to support
10 the capital of these banks very successfully, Your Honor. The
11 capital is in good standing. There is a proposed business plan
12 with the OTS, and we are hopeful that the FSB, the thrift bank,
13 will be back in business doing its ordinary course of business
14 shortly.

15 THE COURT: I appreciate what you said. I am,
16 frankly, very sensitive to a remark that appeared in the papers
17 filed in opposition to this motion which indicated that the
18 Court should not be a, quote, "rubber stamp" with respect to
19 matters of this sort. Candidly, I viewed it as a somewhat
20 extreme statement, considering what I consider to have been the
21 rather careful and thoughtful attention paid to each of the
22 prior applications. And I don't assume that the assertion was
23 made to suggest that I have in the past been a rubber stamp,
24 but rather that I should not in the future simply accept at
25 face value, without further diligence, the assertions made in

1 the debtors' papers.

2 I would be interested, as a result, in hearing from
3 the creditors' committee with respect to the committee's
4 independent assessment of this transaction, and also hearing
5 from any other party-in-interest who wishes to be heard in
6 connection with this. I noted that the objection -- I guess
7 I'll call it a limited objection -- that was filed consisted
8 more of questions than of legal argument, questions going to
9 the reasonableness and soundness of the business judgment of
10 the Lehman estate in continuing to support the capital
11 requirements of Aurora, in particular.

12 And I'm looking for some assurances that is in fact a
13 sound exercise of business judgment. Based upon my review of
14 the papers I have little doubt this is true, but I think in
15 light of the objection, notwithstanding the fact that it has
16 been withdrawn, that we should treat this with a little more
17 time in terms of understanding why the repurchase agreement is
18 being modified in the manner proposed, the nature of possible
19 future capital requirements, if any, and the overall business
20 judgment associated with this latest round of support for the
21 institution.

22 MR. MILLER: Let me just add, if I might, Your Honor,
23 before Mr. Dunne takes the lectern. What the debtors have done
24 in connection with these two banks, Your Honor, is done totally
25 in accordance with full disclosure to the creditors' committee,

1 very active involvement by the creditors' committee which has a
2 bank subcommittee which is intimately involved in this.

3 Mr. Doug Lambert, Your Honor, who is with Alvarez &
4 Marsal, and runs the bank book, is here in court. And his
5 declaration was filed in response to the limited objection.
6 Also in connection with the limited objection, Your Honor, each
7 of the issues or questions that were raised by Elliot were
8 responded to at length in the reply.

9 THE COURT: I take it that's the principal reason
10 that the objection was withdrawn?

11 MR. MILLER: I believe so, Your Honor.

12 THE COURT: Is there any --

13 MR. MILLER: Now, it could have been resolved, Your
14 Honor, if a representative of Elliot might have called and made
15 an inquiry instead of these voluminous papers. But I think
16 overall, looking back in hindsight, this was a good thing that
17 these papers were filed. They tie in with the prior
18 applications which were made. And as I understand it, Your
19 Honor, this is almost like a revolving credit. Advances are
20 made, they're paid back, advances are made. And as of today,
21 there is no really outstanding balance in connection with these
22 two banks.

23 THE COURT: It's a liquidity facility.

24 MR. MILLER: Exactly, Your Honor. And the problem
25 with these two banks, Your Honor, is the fair-value accounting

1 method. Because it was associated with Lehman Brothers broker
2 dealer enterprise and so on, it elected to do mark-to-market
3 accounting. And because of the state of the financial markets,
4 the assets have to be marked to the market, assuming you could
5 sell these assets. And a lot of these assets, Your Honor,
6 relate to the real estate market. And the real estate market,
7 as we all know, is substantially depressed. And it's the mark-
8 to-market that is drawing down the risk based capital ratio.
9 If you took what we think is the real value of these assets,
10 there would not be a capital problem. And hopefully as the
11 capital markets recover, and everybody talks about the issues,
12 this problem will go away.

13 In addition, there is a request of the OTS to approve
14 a business plan which will allow FSB to go back to its business
15 of issuing certificates of deposit. That would alleviate the
16 financing because they would be rolling over. The problem
17 today is in the middle of this month, probably next week, a
18 whole slew of CDs come due that have to be redeemed.

19 THE COURT: I understand the business justification
20 for it as represented. I am interested in hearing from the
21 committee.

22 MR. MILLER: Yes. And if Your Honor has any
23 questions, Mr. Lambert, he's here for that purpose.

24 THE COURT: Thank you.

25 MR. DUNNE: Good morning, Your Honor, Dennis Dunne

1 from Milbank, Tweed, Hadley & McCloy LLP on behalf of the
2 official creditors' committee. At the outset, I echo
3 Mr. Miller's comments. They were accurate in their description
4 of the committee's involvement.

5 The committee has worked extensively with the
6 debtors, not just on this applications, but with respect to the
7 banks generally, how the banks fit in with the Lehman family
8 generally, and how the value that is within those banks might
9 be preserved through these investments and result in additional
10 distributions to unsecured creditors. We had also formed, at
11 the official committee level, a bank subcommittee to deal
12 precisely with these issues. And the three members of that
13 committee spent a lot of time with the committee advisors and
14 the debtor advisors.

15 In short, each of the questions outlined in Elliot's
16 limited objection have been considered, raised by the
17 subcommittee and adequately addressed in dialogue with the
18 debtors as well as the applicable government regulators. We've
19 advised Elliot of that as well, and I do believe that that
20 contributed to their withdrawal of the motion.

21 We think that, on balance, this is the right thing to
22 do. There is, of course, no such thing as a sure thing or a
23 risk-less transaction, but we think that, given the amount of
24 value that should be preserved as a result of this, that it is
25 a sound exercise of the debtors' business judgment.

1 THE COURT: Thank you for that comment.

2 Is there anyone else who wishes to be heard on this?

3 And is anyone here on behalf of Elliot, the objector -- the
4 former objector? Apparently they not only withdrew the
5 objection but decided not to come to court.

6 I'm simply going to ask Mr. Lambert if he has
7 anything that he would like to state in connection with the
8 pending application, the need for the revised repurchase
9 arrangement, and any comments that he may have as to the
10 sufficiency of this facility to deal with Aurora's foreseeable
11 needs.

12 MR. LAMBERT: Good morning, Your Honor. Doug
13 Lambert, representing the estate with Alvarez & Marsal. I
14 think that the documents as well as my declaration do speak for
15 the thoroughness of the process involved here. I think all
16 parties agree on the sound business judgment that's been set
17 forth in the papers. Again, this remains a very fluid
18 situation. However, we believe that we've demonstrated,
19 hopefully by this motion being approved, that the bank will
20 have sufficient liquidity during the pendency of our
21 discussions and negotiations with the regulators to allow
22 deposits to be reaccessed by the institution.

23 THE COURT: Fine. I'm satisfied with that
24 representation and with your declaration. And I believe that
25 ample cause has been demonstrated for approval of the motion

1 and I hereby approve it.

2 MR. LAMBERT: Thank you, Your Honor.

3 MR. MILLER: Thank you, Your Honor. We have a
4 revised order which we will submit, Your Honor.

5 THE COURT: Fine. Thank you.

6 MR. MILLER: Just one comment, Your Honor, without
7 being disparaging. Reading the withdrawal of the objection,
8 there appears to be an implication in that withdrawal document
9 that Mr. Bienenstock believes that he was appointed as the
10 guardian of these estates. And he attaches a piece of the
11 transcript from the September 15th hearing on the extension of
12 exclusivity just to establish that. And I don't believe Your
13 Honor did that. I just wanted the record clear.

14 THE COURT: Well, that record will speak for itself
15 and I'm not going to embellish it now --

16 MR. MILLER: Thank you, Your Honor.

17 THE COURT: -- especially without Mr. Bienenstock
18 being here to comment further on the subject. So let's just
19 table that for another day.

20 MR. MILLER: He was certainly invited. Your Honor,
21 Mr. Fail will take over from here.

22 MR. FAIL: Good morning, Your Honor. Garrett Fail,
23 Weil, Gotshal & Manges for the debtors.

24 THE COURT: Good morning.

25 MR. FAIL: There are four remaining items on the

1 agenda that have been marginally resolved. The first motion
2 that was marked as uncontested, Your Honor, was the motion of
3 Wells Fargo Bank to compel Lehman Brothers Special Financing,
4 Inc. to assume or reject a reserved fund agreement among LBSF,
5 Wells Fargo and a third party.

6 By way of background, Your Honor, pursuant to this
7 reserve fund agreement, Wells Fargo had purchased certain
8 securities from LBSF. If Wells Fargo subsequently sold the
9 securities for a price less than a guaranteed price as defined
10 under that agreement, LBSF would be obligated to pay Wells
11 Fargo. If, alternatively, Wells Fargo sold the securities at
12 an increased price, Wells Fargo was entitled to keep the excess
13 amount.

14 LBSF did not oppose the relief requested in this
15 motion and determined, in fact, to reject the reserve fund
16 agreement. LBSF and Wells Fargo have agreed upon a form of
17 order that we could submit to reject the agreement and we ask
18 the Court to authorize that rejection.

19 THE COURT: I'll authorize the rejection.

20 MR. FAIL: Thank you, Your Honor.

21 The next item on the agenda was a motion to assume
22 open trade confirmations with three Basso funds. On June 30,
23 2009 the debtors moved to authorize LCPI, Lehman Commercial
24 Paper, Inc., to assume three loan trades with funds that are
25 affiliates of Basso Capital Management, LP. Basso filed an

1 objection to the motion and the debtors responded. Your Honor
2 may recall this item was on the agenda for the July 15th
3 hearing but was adjourned to allow the parties to try to reach
4 an amicable resolution and in that time they have, Your Honor.

5 The parties entered into a letter agreement dated
6 July 30th, pursuant to which Basso agreed to withdraw its
7 objection and the parties agreed upon a proposed form of order
8 to reflect a settlement. Prior to the hearing and last week,
9 the debtors provided the attorneys for the creditors' committee
10 with a copy of both the letter agreement and the proposed order
11 for their review. For your information, Your Honor, this
12 resolution and the proposed order that we intend to submit is
13 very similar to the open trades orders that this Court has
14 entered in December, on December 16th and 23rd, January,
15 February and March of this year in connection with other open
16 trades.

17 THE COURT: As I recall, Basso was asserting an
18 entitlement to some form of adequate protection, if I recall
19 correctly. Has that gone away?

20 MR. FAIL: I believe it has, Your Honor. I don't
21 think it's an issue any longer. I believe they're going to be
22 closing the trades and someone representing Basso is here.
23 Perhaps he can answer the question.

24 THE COURT: I'd just like to understand what the
25 resolution consists of.

1 MR. OLSEN: I'm sorry, Your Honor, the fan was
2 blowing and I didn't hear your question. Harold Olsen from
3 Stroock.

4 THE COURT: I just want to know what the agreement is
5 that you've reached. In papers that I recall seeing a while
6 ago on this matter, Basso, if I recall correctly, was seeking,
7 in effect, adequate protection or additional assurances in
8 connection with the open trade. Has that gone away as an
9 issue?

10 MR. OLSEN: That has gone away, Your Honor, subject
11 to the terms of the letter agreement and entry of the order in
12 the form attached thereto we withdraw our objection.

13 THE COURT: Fine. Great.

14 MR. OLSEN: Thank you.

15 THE COURT: Thank you for that.

16 MR. FAIL: Thank you, Your Honor. The next item on
17 the agenda is the debtors' motion to establish procedures to
18 compromise and settle claims in respect of obligations -- in
19 respect of origination or purchase of residential mortgage
20 loans.

21 The claims that the debtors seek authorization to
22 settle or contract in tort claims that the debtors have against
23 originators or sellers of residential mortgage loans based on
24 breaches of representations, warranties and covenants in the
25 mortgage loan purchase agreements, the debtors sought omnibus

1 authority to compromise and settle such claims against third
2 parties up to specified thresholds upon notice to the
3 creditors' committee or with authority from the Court. The
4 creditors' committee and Wells Fargo Bank both filed objections
5 to the motion. Citibank filed a joinder to Wells Fargo's
6 motion. And U.S. Bank filed a reservation of rights. Your
7 Honor, the creditors' committee requested that it receive
8 notice of all compromises and settlements even for those that
9 fall below the threshold for creditors' committee approval.

10 The committee also requested that the debtors file
11 quarterly reports with the names and dates of all settlements
12 that were entered in with that period. The amount of such
13 claimant's settlement need not be included in the reports. The
14 debtors have agreed to the changes proposed by the committee.

15 Wells Fargo, Citibank and U.S. Bank act as trustees
16 for various trusts that purchase certain residential mortgage
17 loans from the debtors, Your Honor. In connection with these
18 acquisitions, the trustees acquired certain rights to pursue
19 repurchase and indemnity claims with respect to the mortgage
20 loans that they purchased. The trustees requested the addition
21 of language in the proposed order to clarify that the debtors
22 are not seeking to compromise claims that were transferred to
23 third parties. And the debtors have agreed to add that
24 language to the proposed order as well.

25 The debtors believe that the proposed order resolves

1 any objections that may be outstanding and ask for the Court's
2 authority for the relief requested.

3 THE COURT: Motion granted.

4 MR. FAIL: Thank you, Your Honor.

5 The last item on the agenda is -- this morning for
6 the debtors and then there's a SIPA matter to be heard this
7 morning as well -- is the debtors' motion for entry of an order
8 pursuant to bankruptcy Rule 2004 compelling discovery.

9 Lehman Brothers Special Financing, Inc. is seeking
10 basic and necessary information from Consolidated Container
11 Company to determine whether the valuation of terminated
12 derivative contracts by Consolidated were proper.

13 The debtors had requested an order compelling
14 Consolidated to produce certain documents as well as
15 designating and producing individual for examination.
16 Consolidated did not object to the relief requested provided
17 that the order that we submit to Your Honor complies with
18 Bankruptcy Rule 2004(c), which will require the debtors to
19 proceed in accordance with Bankruptcy Rule 9016 such that, if
20 necessary, Consolidated can invoke the protections of Rule 45
21 of the Federal Rules of Civil Procedure.

22 The debtors and Consolidated have agreed upon a
23 proposed form of order which authorizes the debtor to issue
24 discovery requests and subpoenas as may be necessary to
25 accomplish discovery that would be authorized by the order,

1 Your Honor. And it would also -- I think it removes the
2 deadline that had been in the proposed order for the production
3 of documents and provides flexibility with the scheduling of
4 the examination of Consolidated's designee.

5 Given this consensual nature of the relief requested,
6 the debtors request that the Court grant the motion and enter
7 the proposed order as amended.

8 THE COURT: I'll grant the motion but simply ask if
9 there's anyone here from Consolidated Container Company who
10 wishes to be heard? Apparently not, so the relief is granted
11 without any comment from them.

12 MR. FAIL: Thank you very much, Your Honor.

13 MR. MILLER: Your Honor, that concludes the calendar
14 insofar as LBHI and the other debtors are concerned. There is
15 one uncontested SIPA matter on the calendar. I don't know
16 if --

17 MR. MARGOLIN: Good morning, Your Honor. Jeffrey
18 Margolin, Hughes Hubbard & Reed representing James W. Giddens
19 as trustee for the SIPA liquidation of Lehman Brothers, Inc.
20 We have a very short calendar this morning, Your Honor. All
21 matters were adjourned except for one uncontested matter.

22 The matter going forward is the trustee's motion for
23 entry of an order pursuant to Section 365 of the bankruptcy
24 code and Federal Rules of Bankruptcy Procedures 6006 and 9014
25 authorizing the trustee to assume and assign an executory

1 contract to LBHI and establishing procedures at future
2 assumptions, assignments of Chapter 11 debtors and their
3 nondebtor affiliates.

4 THE COURT: I have one question about this.

5 MR. MARGOLIN: Yes.

6 THE COURT: What contract is this? I saw it
7 identified on the schedule but it -- I couldn't tell what it
8 was, why it was being assumed and assigned. I saw it had a
9 zero cure amount and apparently it's going to LBHI. I don't
10 understand the transaction.

11 MR. MARGOLIN: The transaction, Your Honor, is a
12 contract with Gallery Systems. This is a service that provides
13 certain technology for tracking artwork. It was shared by the
14 Chapter 11 debtors, LBHI and LBI. To a certain extent, we've
15 determined that we do not need the contract any further to
16 effectuate the SIPA liquidation, but it is necessary for
17 potential art -- for tracking of potential artwork that remains
18 with the Chapter 11 debtors. And we've decided in the
19 trustee's business judgment to assume and assign it over to the
20 Chapter 11 debtors.

21 THE COURT: All right. Now, I understand it.

22 MR. MARGOLIN: Your Honor, similar relief was
23 approved by the Court back in May to allow the trustee to
24 assume and assign future contracts without further Court Order
25 to the purchaser of Neuberger Berman. No objections were filed

1 to the motion; however, we did receive an inquiry from Barclays
2 Capital, Inc. regarding the form of order. In response to the
3 inquiry, the proposed order has been revised to reflect that
4 Barclays Capital will receive notice of all future contracts --
5 contracts designated for assumption. Clean and red-line
6 versions of the revised proposed order were docketed late last
7 week. Unless the Court has any additional questions, we
8 respectfully request that the Court grant the motion.

9 THE COURT: Motion is granted.

10 MR. MARGOLIN: Thank you, Your Honor.

11 THE COURT: Thank you and we're adjourned till 2
12 o'clock to deal with the adversary proceeding docket and then I
13 believe we have hearings scheduled again on August 11 and
14 August 26th. We're adjourned.

15 (Proceedings concluded at 10:38 a.m.)

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2 I N D E X

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4 RULINGS

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2 C E R T I F I C A T I O N

3

4 I, Sharona Shapiro, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

7

8 Sharona Shapiro

9 AAERT Certified Electronic Transcriber (CET**D-492)

10

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16 Date: August 6, 2009

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